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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Sacramento)**

THE PEOPLE,

Plaintiff and Respondent,

v.

DAQUAN JAVON COOPER,

Defendant and Appellant.

C083129

(Super. Ct. No. 14F08243)

Defendant Daquan Javon Cooper pleaded guilty to being a felon in possession of a firearm. (Pen. Code, § 29800, subd. (a)(1)—count five of amended information.)¹ Thereafter, a jury found him guilty of two counts of second degree robbery (§ 211—counts two and three of second amended information) and one count of being a felon in

¹ Undesignated statutory references are to the Penal Code.

possession of a firearm (§ 29800, subd. (a)(1)—count four). The jury also found that defendant personally used a firearm in the commission of the robbery offenses. (§ 12022.53, subd. (b).) The trial court sentenced him to an aggregate term of 20 years in state prison.

On appeal, defendant contends the trial court prejudicially erred in denying his motion for mistrial. Defendant further contends the jury's finding of guilt on the felon in possession of firearm offense is not supported by substantial evidence. We affirm the judgment.

FACTUAL BACKGROUND

In light of the limited issues raised on appeal, we will provide only a brief recitation of the underlying facts.

On December 15, 2014, Fang Yang and Melissa Bui were working at Baidu Foot and Body Massage. Around 5:00 p.m., defendant and two other men entered the massage parlor and robbed Yang and Bui at gunpoint. During the robbery, both Yang and Bui were hit with a firearm. Before fleeing the massage parlor, the three men took numerous items, including, among other things, the massage parlor's laptop and desktop computers, Yang's purse and iPhone, Bui's necklace and cell phone, and several thousand dollars.

Following the robbery, Sacramento County Deputy Sheriff Jack Noble was dispatched to the massage parlor. When he arrived, both Yang and Bui complained of head pain from being struck with a weapon. During his conversation with Yang and Bui, Deputy Noble noticed that the massage parlor had a surveillance system with multiple cameras. Based on the surveillance video, several law enforcement officers later identified defendant as one of the perpetrators of the robbery.²

² After the robbery, an individual was shot and killed. In view of the issues raised on appeal, we will not recite the facts regarding the shooting.

DISCUSSION

1.0 Denial of Motion for Mistrial

Defendant contends the trial court prejudicially erred in denying his motion for mistrial. He argues that a prosecution witness violated a pretrial order by disclosing that defendant had previously been confined in a juvenile detention facility. We conclude the trial court did not err in denying defendant's motion for mistrial.

1.1 Additional Background

Prior to trial, defendant filed a written motion requesting an order excluding any evidence showing that he had a prior conviction for carrying a concealed firearm. He also sought an order excluding any evidence showing that he was on probation at the time of the robbery. At the hearing on the motion, there was a discussion about how the parties could refer to the probation officers that the prosecution intended to call for the purpose of identifying defendant as one of the perpetrators of the robbery. The prosecutor explained that the officers were familiar with defendant based on his numerous incarcerations at the Boys' Ranch and other facilities. During the hearing, it was agreed that the witnesses could identify themselves as law enforcement officers employed by the County of Sacramento and then describe the extent of their contacts with defendant without indicating he was on probation at the time of the robbery. The prosecutor also agreed that if defendant testified he would not impeach him with his prior conviction for carrying a concealed weapon.

At trial, several law enforcement officers, including Officer Jamie Davis, identified defendant as one of the perpetrators of the robbery based on the video surveillance from the massage parlor. On direct examination, Officer Davis was asked about her prior interactions with defendant as well as her reaction when she received an e-mail bulletin containing defendant's picture as one of the robbery suspects. The following exchange took place:

“[PROSECUTION]: In the middle of December 2014, were you e-mailed an information bulletin or did you receive an information bulletin in your e-mail in-box that was offered by the Sacramento County Sheriff’s Department?

“[WITNESS]: Yes.

“[PROSECUTION]: I’m placing the Attempt to ID Bulletin off of People’s Exhibit 1. [¶] This particular exhibit here that I placed on our overhead, do you recognize this as in fact the bulletin you received in your e-mail in-box?

“[WITNESS]: Yes.

“[PROSECUTION]: When you received this, what was your reaction when you opened it up and took a look at the pictures of the three individuals depicted on the bulletin itself?

“[WITNESS]: I recognized all three of them, knowing that they were from the Boys’ Ranch, but only knew that the one in the middle was [defendant]. I remembered his name. I couldn’t remember the other two names; however, I knew the middle one was [defendant].

“[DEFENSE COUNSEL]: Can we approach, Judge?

“[THE COURT]: Yes.

After this exchange, defense counsel asked the trial court to declare a mistrial or, in the alternative, strike Officer Davis’s testimony or admonish the jury because referring to the Boys’ Ranch implied that defendant was incarcerated prior to the robbery. The trial court concluded that the appropriate remedy was to admonish the jury, reasoning that there was not “an incredible amount of prejudice” because “one of the charges in this case is . . . felon with a firearm, [so] there’s either going to be a stipulation of a felony conviction, or [the prosecutor] is going to be allowed to prove up [defendant’s] felony convictions” The trial court subsequently admonished the jurors as follows: “[I

just wanted to remind you that the witnesses who testified this afternoon are employed in the field of law enforcement. They testified regarding their past contact with one or more of the defendants. [¶] You may consider the testimony of this past contact only as it relates to the identification of that particular defendant and whether or not that particular defendant is or looks familiar to the witness. Do not guess or speculate as to the reason or circumstances of that past contact.”

1.2 Analysis

“A trial court should grant a motion for mistrial ‘only when “ ‘a party’s chances of receiving a fair trial have been irreparably damaged’ ” ’ [citation], that is, if it is ‘apprised of prejudice that it judges incurable by admonition or instruction’ [citation]. ‘Whether a particular incident is incurably prejudicial is by its nature a speculative matter, and the trial court is vested with considerable discretion in ruling on mistrial motions.’ [Citation.] Accordingly, we review a trial court’s ruling on a motion for mistrial for abuse of discretion.” (*People v. Avila* (2006) 38 Cal.4th 491, 573.)

We find no error. Our Supreme Court has repeatedly held that the fleeting mention of similar evidence regarding the defendant’s past criminality does not require a mistrial. (See, e.g., *People v. Valdez* (2004) 32 Cal.4th 73, 124, 128 [because a witness’s reference to the defendant’s having been at “ ‘Chino Institute’ was brief and isolated, the trial court properly denied the motion for mistrial”]; see also *People v. Avila, supra*, 38 Cal.4th at p. 574 [the trial court did not abuse its discretion in denying a mistrial motion because the court admonished the jury to disregard the witness’s testimony that the defendant was recently in prison]; *People v. Bolden* (2002) 29 Cal.4th 515, 554-555 [a witness’s reference to obtaining the defendant’s address from the “parole office” was “not significant in the context of the entire guilt trial”].)

Here, the challenged testimony did not include an express reference to defendant’s probation status at the time of the robbery. We are not persuaded that the isolated

comment regarding the Boys' Ranch irreparably damaged defendant's chance of receiving a fair trial. The witness's reference to the Boys' Ranch did not expressly relate that location to defendant's criminal history. But even if we assume the jury understood that the witness was referring to defendant's previous confinement in a juvenile detention center, any prejudice caused by the brief and isolated comment was not significant given the trial court's admonishment and the evidence presented at trial. The jury was informed via stipulation at the close of trial that defendant was a convicted felon. During trial, the robbery victims testified that defendant and two other men robbed them at gunpoint. Multiple law enforcement officers identified defendant as one of the perpetrators based on the surveillance video from the massage parlor. In comparison with this evidence, the fleeting mention of defendant's confinement at the Boys' Ranch was inconsequential.

2.0 Substantial Evidence—Felon in Possession of Firearm

Defendant contends the jury's finding of guilt on the felon in possession of firearm offense was not supported by substantial evidence. He argues there was no evidence demonstrating that he was a convicted felon. We disagree.

“In addressing a challenge to the sufficiency of the evidence supporting a conviction, the reviewing court must examine the whole record in the light most favorable to the judgment to determine whether it discloses substantial evidence—evidence that is reasonable, credible and of solid value—such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. [Citation.] The appellate court presumes in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence.” (*People v. Kraft* (2000) 23 Cal.4th 978, 1053.)

The elements of the crime of being a felon in possession of a firearm are conviction of a felony and ownership or knowing possession, custody, or control of a firearm. (*People v. Osuna* (2014) 225 Cal.App.4th 1020, 1029; § 29800, subd. (a)(1).)

As our Supreme Court has explained, “when a defendant’s prior felony conviction is an element of a charged crime: (1) The prosecution can prove the conviction in open court, and that proof can include both the fact that the defendant has previously been convicted of a felony offense as well as the nature of the felony involved; or (2) the defendant can stipulate to having a felony conviction and thereby keep from the jury the nature of the particular felony.” (*People v. Sapp* (2003) 31 Cal.4th 240, 261.)

Here, the trial court instructed the jury that the parties had stipulated defendant was previously convicted of a felony. The court explained to the jury that they must accept this fact as true. We reject defendant’s contention that substantial evidence does not support his conviction because there is nothing in the record indicating that the jury was given evidence of the parties’ stipulation. A party may not stipulate or admit an essential fact or element in open court and then claim that the fact or element is unsupported by substantial evidence. (*In re Francis W.* (1974) 42 Cal.App.3d 892, 903.) “It is, of course, well established that the defendant is bound by [a] stipulation or open admission . . . and cannot mislead the court and jury by seeming to take a position on issues and then disputing or repudiating the same on appeal.” (*People v. Pijal* (1973) 33 Cal.App.3d 682, 697.)

3.0 Corrections to Abstract of Judgment

We note the firearm enhancements attached to defendant’s two robbery convictions are incorrectly identified in the abstract of judgment. What is set forth as a charge and true finding pursuant to Penal Code section “12027.53 (b)” should be Penal Code section “12022.53(b)” instead. We will order the trial court to prepare a corrected abstract of judgment to reflect the correct statute.

DISPOSITION

The trial court shall prepare a corrected abstract of judgment that sets forth Penal Code section 12022.53(b) as the basis for the two enhancements listed at item No. 2 of the abstract. A certified copy of the corrected abstract shall be forwarded to the Department of Corrections and Rehabilitation. The judgment is affirmed.

BUTZ, Acting P. J.

We concur:

MURRAY, J.

RENNER, J.